Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	
Compensation Regime	)	CC Docket No. 01-92
	)	
Missoula Intercarrier Compensation	)	
Reform Plan	)	
	)	

COMMENTS OF THE
NEW JERSEY BOARD OF PUBLIC UTILITIES

The New Jersey Board of Public Utilities (Board) submits the following comments in response to the Public Notice (Notice) released by the Federal Communications Commission (FCC or Commission) on July 25, 2006. In this Notice, the FCC seeks comment on the Missoula Plan (Plan), an intercarrier compensation (ICC) reform plan filed by the National Association of Regulatory Utility Commissioners' (NARUC) Task Force on Intercarrier Compensation. The Board opposes the Plan for reasons expanded upon throughout these comments.

INTRODUCTION

The Missoula Plan is an industry proposal which attempts to address problems in the current intercarrier compensation regime. Intercarrier compensation refers to the payments telecommunications carriers make to each other for the costs of originating and terminating calls on each others' network. Today the level of compensation between carriers is determined by a myriad of federal and state regulations, and the rates that are charged differ by type of carrier and type of service. The current system is complex and contains loopholes that allow for regulatory arbitrage and gaming of the system by carriers. The Missoula Plan attempts to address these problems by proposing a more uniform rate schedule that reduces and unifies certain terminating intercarrier charges and either eliminates or reduces originating charges. The Plan classifies carriers' study areas into three different categories or "Tracks", providing carriers in each Track different schedules and options to achieve access rate reductions. The Plan would also allow carriers to recover lost revenues through an increased subscriber line charge (SLC) and a new Restructure Mechanism (RM), and it also establishes an Early Adopter Fund (EAF) to compensate states that have already rebalanced their intrastate access charges. In addition, the Plan establishes default rules for interconnection agreements and proposes a number-based approach for determining the proper categorization of traffic.

SUMMARY

The Board commends the efforts of the NARUC Task Force on Intercarrier Compensation (Task Force) and its work in attempting to achieve a fair uniform system for intercarrier compensation. This complex Plan covers issues including interstate and intrastate access reform and USF reform, concepts which are inextricably linked. The goals of the Plan as articulated by its supporters are to reduce and/or eliminate arbitrage among carriers and to levelize the intercarrier compensation rates. The Plan as filed, however does not reach these goals. The Plan attempts to unify intercarrier payments for the use of each other's networks. The rates proposed in the Plan however, are not unified. These rates continue to vary by carrier and of particular concern is that the new rates generate some $6 billion less revenue to carriers than the current rate structure generates. The result is the Plan shifts the burden from carriers to consumers, in particular low and middle-income, low-usage urban consumers and the Plan will further burden New Jersey ratepayers by more than $300 million with little or no attendant benefits. This Plan is bad for consumers, and particularly low and middle-income consumers, who are the least able to afford the increased charges which are nothing more than additional subsidies. If the Missoula Plan is enacted, revenue from low and middle-income urban consumers would subsidize higher income consumers and their carriers in rural states. THE BOARD THEREFORE OPPOSES THE PLAN.

COMMENTS

As stated in many comments put forth by New Jersey in the past, any reforms to ICC or the USF must concentrate on balancing the burden of carriers and customers more fairly and on capping the USF. The Board reiterates that the USF should not be utilized to promote competition but to ensure the availability of affordable telephone service for all Americans who wish to have such service. Such reforms must focus on accomplishing a better balance between contributions and distributions. There are a number of states who are "net payers" into the Universal Service Fund who have, over the years, borne a great burden to support a system so that all customers in rural or urban areas are not discriminated against and receive safe, adequate and proper service. This goal has come at a high cost to New Jersey, a net payer, who has contributed significant amounts of funds to ensure universal service to all end users throughout the country, rural and urban.

A paramount concern for New Jersey is equalizing intercarrier compensation rates while at least keeping end user rates stable. The Missoula Plan is an intercarrier plan and as such should properly focus on rates for the originating and terminating traffic paid to and by carriers. However, the solution proposed by the Plan focuses on an increase in rates paid directly by end users and does not evenly distribute the expenses of the Plan equitably. The Plan emphasizes the need to increase the SLC, reduce access revenues and increase the USF through among other things, a restructure mechanism. The Plan unjustly shifts the financial burden of ICC reform from carriers to consumers, particularly consumers from more urbanized states, such as New Jersey.

The resulting benefit of reducing access charges and increasing the SLC is questionable. The Plan proposes that customers pay a higher SLC while lost access revenues are recovered through alternative means. However, there is no articulated guarantee in the Plan that the total amount of these access revenue reductions will flow through to customers through reduced rates. While there may be eventual benefits to high toll users, those prospective gains do not offset the increased burden to the overall population of customers. More importantly, the burden of increased SLCs will likely fall disproportionately on low and middle-income, low-usage residential customers who have the fewest competitive choices and will not benefit from this Plan. While the Board does recognize that the Plan contains additional support for Lifeline customers to offset the significant increases in the SLC, there are large numbers of ratepayers in our state and others, who may not qualify for Lifeline assistance, yet are properly considered low and middle-income consumers.

The Board concurs with the conclusion of the National Association of State Utility Consumer Advocates (NASUCA), which argues that the Missoula Plan results in unsustainable increases in the USF. The Plan calls for at least a $2.225 billion increase in USF funding through a new Restructure Mechanism and an Early Adopter Fund, in addition to increases in the High Cost Fund, and Low Income Fund. Overall, the Plan will result in a 32% increase in the current $7 billion USF, pushing the fund well over $9 billion and would result in an increase in the assessment factor on all interstate and international revenues to more than 13%, under the current USF contribution methodology.

As stated by Billy Jack Gregg of NASUCA, there is no sharing of the burden under the Missoula Plan. ICC rates are reduced by approximately $6 billion under the Plan while there is no pass through of these reductions to consumers. End user rates would increase by more than $6 billion to pay for the Plan. NASUCA calculates the increases as follows:

- $4.7 B increase in SLCs
- $1.5 B for Restructure Mechanism
- $0.3 B increase in High Cost Fund
- $0.2 B increase in Low Income Fund
- <u>$0.2 B for Early Adopter Fund</u>
- $6.9 B TOTAL

Further, ICC reform which results in an increase in the Federal USF does not cure the inherent problems in the program. Simply shifting the burden of how access costs are recovered from carriers to end users is not the answer. A revenue neutral rate restructure where certain inter-carrier rates would increase while others decrease, could accomplish the same goals to unify ICC rates without the need to dramatically increase the SLC and the federal USF.

The Plan attempts to address a plethora of issues in addition to intercarrier compensation reform, but it fails to provide details on key implementation issues. The Plan fails to show the impact of the establishment of the Early Adopter Fund and the Restructure Mechanism on consumers, individual carriers, or states. In addition, the complexity of the Plan raises many outstanding questions including how non-rural states benefit from an increase in the SLC, RM, and EAF. These additional fees assessed directly to New Jersey consumers are of great concern. Our USF funding burden is far too great today. New Jersey already contributes in excess of $170 million more than we receive in support. The Plan will further exacerbate the problem.

The Plan also has a potential negative impact on competition because it appears to enable incumbent local exchange carriers (ILECs), but not competitive local exchange carriers (CLECs) to offset access revenue reductions through SLC increases. In addition, ILECs will be able to increase SLCs in areas with little or no local competition while holding SLCs down in areas experiencing competition. Under the Plan, as access charges are reduced, carriers who do not recover the entire resulting lost revenues through SLC increases may recover any difference through a newly developed “Restructure Mechanism”. This new RM is estimated to be approximately $1.5 billion, (with no details on how this money would be collected) and the Plan does not allow for competitors to draw from this fund.

Another potential negative impact on competition would be that the Plan could effectively override many existing interconnection arrangements. For example, the Plan could supersede existing contractual arrangements that are in “evergreen” periods, i.e., cases where the initial term of the agreement has been fulfilled yet the parties’ relationship remains governed by the continuing contract.

In fact, the only interconnection agreements the Plan could leave intact are those that are not in evergreen status and that explicitly reject changes to the contract based on a change of law (which will be very few since many contracts may require the parties to adjust their terms to reflect changes of law). As a result the Plan could possibly override or cancel existing interconnection agreements that were negotiated between two parties and approved by state commissions consistent with §§ 251 and 252 of the federal Telecommunications Act of 1996.

In addition to the estimated $1.5 billion RM, the Plan establishes an Early Adopter Fund for states that have previously restructured (reduced) intrastate access charges and either established intrastate USFs or increased basic telephone rates. This Early Adopter Fund is estimated to total “at least” $200 million. This new fund and the $200 million estimate are especially troublesome to New Jersey. This fund is an attempt to solicit state support for the Plan, however, by its very nature, it will shift the burden of support for ratepayers from one state to another. Based on public policy decisions made by the Board not to implement a state USF due to the population density of New Jersey, it would appear we would not have access to this fund. What is of concern is that our ratepayers will likely be burdened yet again, if the funding for this EAF finds its way into the Federal Universal Service Fund, where we already pay a disproportionate share. In addition, the estimate of “at least” $200 million does not appear to be close enough to offset intrastate USFs currently in place. A recent report from the National Regulatory Research Institute (NRRI) contains data that suggests that nearly $1.4 billion was distributed by 17 states in 2004, through intrastate USF high cost funds. Therefore, the Missoula Plan estimates are very questionable and there are no details on the method of recovery for any of the new funds or increases to current funds.

The Board concurs with the opponents of the Plan who have balked at the premise that ILECs, in particular rural ILECs, must be compensated dollar-for-dollar for any access charge reductions. This dollar-for-dollar concept is flawed because it completely ignores the numerous alternative revenue streams (such as long distance service, DSL service, and video services) that ILECs have developed to recover the costs of their networks. The opponents further argue and we agree that the USF provisions of the Plan are focused more on achieving "revenue neutrality" for ILECs (again, mostly rural ILECs) than on delivering benefits to consumers. In fact, low and middle-income, low-usage consumers, the least able to afford increases in their telephone bills, may well be substantially harmed.

Another concern to New Jersey and other state commissions is the issue of FCC preemption of state authority over intrastate issues. Although the Plan suggests that it was "designed as a cooperative effort between the FCC and the states", it appears that the end result of the Plan is to undermine state action over intercarrier payments and interconnection in general. Under the Plan, implementation of the intercarrier compensation rates and increases in the SLC caps would be mandatory for states, except in a few instances. Additionally, as an “incentive”, states that chose not to participate in the Plan would be ineligible to receive funding from the Restructure Mechanism or the Early Adopter Fund, despite the fact that they would be subject to the increased SLC charges. To federalize intrastate access rates as proposed by the Plan disrupts the joint jurisdictional regime that has evolved throughout the years without justification. FCC-ordered intrastate access rates impact the regulatory structure which is governed by the states, and, absent a clear and specific need for the states to cede authority over intrastate access rates to the FCC, we believe it is premature for the FCC to consider this course of action. Reshaping ICC rates should not result in the immediate preemption of state authority.

Substantial increases to customers as outlined in the Missoula Plan require far more support and justification before being implemented and mandated to end users. Under the current system, based on interstate/international revenues, New Jersey’s contribution of $215 million represented 3.74% of the total USF which was approximately $5.75 billion in 2004. New Jersey received only $45 million or 0.8% of the funds distributed from the USF. Recent estimates available from the Universal Service Administrative Company, projects the High Cost portion of the Fund to be about $4.2 billion annualized for 2006. Of that $4.2 billion, New Jersey is projected to receive only $1,180,188 or .0003% which is 3/100$^{\text{ths}}$ of 1%.

In an attempt to calculate the Missoula Plan's impact on New Jersey, the following estimated calculations are based on the 6 million switched access lines in New Jersey. Of these lines, the majority of local customers would be subject to a monthly SLC increase of up to $3.50. Utilizing a $3.50 increase in the SLC equates to a potential annual increase of $252 million per year to New Jersey consumers. This proposal would impose a 20% increase in rates to low-usage, low and middle-income consumers who currently purchase nothing more than basic service.

In addition to the SLC increase as described above, there is a separate, additional $2.225 billion to be recovered under the Plan (as described previously, this estimate may be dramatically understated). According to the proponents of the Plan - who have not provided details but suggest that this money be recovered through the federal USF or similar plan - this recovery would equate to $0.30 per month per *connection* (telephone number). When applied to New Jersey's 20 million connections, this equates to $72 million per year from New Jersey.

The $0.30 per month calculation by the Plan's supporters is a per-*connection* charge which is different than the current federal USF assessment which is based on *revenues.* Such a structural change to the federal USF, that is, contributions based on connections rather than revenues, is a concept that the Board has and continues to endorse. Utilizing our previously identified current contribution factor of 3.74%, New Jersey consumers would be responsible for $83.2 million of the new $2.225 billion created by the Plan. This equates to an even greater burden for New Jersey consumers under the Plan ($83.2 million vs. $72 million) if the structural change in methodology from revenues to a per-connection charge is not adopted.

Under either contribution methodology, the total impact to New Jersey consumers utilizing these calculations under the Plan amount to annual increases in excess of $325 million. This equates to not only a 50% increase in the SLC for consumers, but increases New Jersey's net payment into the USF from $170 million to approximately $250 million, a more than 40% increase in the subsidy New Jersey pays to other states. For obvious reasons, this is untenable.

While the Plan's proponents provide an analysis that they argue shows consumers will benefit from the Plan, several of their assumptions lack sufficient support. For example, there is an assumption that the reduction in access charges in the Plan will translate into lower long distance rates and result in a savings to consumers, yet there is no assurance in the Plan that the rates will be reduced. Their analysis does show what would be expected even with their assumptions - - low-end users will see increases in their bills and high-end users will save money – again <u>if</u> 100% of the savings realized by carriers are passed along to end-users. In fact, low-usage urban customers would see the greatest increase under the proponent's analysis. This Plan could therefore provide a windfall to ILECs in other parts of the country at the expense of New Jersey consumers.

CONCLUSION

The Plan is overly complex and goes well beyond intercarrier compensation; it significantly modifies USF, interconnection processes, billing and collection and preempts state jurisdiction. The Plan shifts two thirds of the costs of interconnection from carriers to consumers with little or no attendant benefits. Finally, the Plan will further burden New Jersey ratepayers, particularly low and middle-income, low-usage consumers who will not benefit from this Plan and by increasing our payments to the Federal Universal Service Fund by an inordinate amount. The Board therefore, strongly opposes the Plan as filed.

Respectfully submitted,

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